

**Dey v Quiznos Master LLC**

2007 NY Slip Op 33244(U)

October 2, 2007

Supreme Court, New York County

Docket Number: 0602639/2006

Judge: Debra A. James

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SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: DEBRA A. JAMES  
*Justice*

PART 59

SAMARENDRA DEY, KALACHAND DUTTA, and NEW AR&D CORPORATION,

Plaintiffs,

- v -

THE QUIZNOS MASTER LLC, THE QUIZNOS CORPORATION, THE QUIZNOS FRANCHISE COMPANY, THE QUIZNOS LICENSING COMPANY, QFA ROYALTIES LLC, JOHN DOE QUIZNOS ENTITIES 1-10, ROC CORP., and ROBERT TOBIAS,

Defendants.

Index No.: 602639/06

Motion Date: 06/05/07

Motion Seq. No.: 01

Motion Cal. No.: 33

**FILED**

OCT 10 2007

NEW YORK COUNTY CLERK'S OFFICE

The following papers, numbered 1 to 4 were read on this motion to dismiss

PAPERS NUMBERED	
1, 2	
3	
4	

Notice of Motion/Order to Show Cause -Affidavits -Exhibits \_\_\_\_\_

Answering Affidavits - Exhibits \_\_\_\_\_

Replying Affidavits - Exhibits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers,

The court shall grant the moving defendants' motion to dismiss. Defendants THE QUIZNOS MASTER LLC, THE QUIZNOS CORPORATION, THE QUIZNOS FRANCHISE COMPANY, THE QUIZNOS LICENSING COMPANY, QFA ROYALTIES LLC, move to dismiss the complaint on the grounds that the Franchise Agreement contains a forum selection clause that states that any dispute arising under the Agreement will be litigated in the District Court for the City & County of

Check One:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Denver, Colorado, or the United States District Court for the District of Colorado.

The First Department has held that

[I]t is the well-settled policy of the courts of this State to enforce contractual provisions for choice of law and selection of a forum for litigation. Forum selection clauses, which are prima facie valid, are enforced because they provide certainty and predictability in the resolution of disputes, and are not to be set aside unless a party demonstrates that the enforcement of such would be unreasonable and unjust or that the clause is invalid because of fraud or overreaching, such that a trial in the contractual forum would be so gravely difficult and inconvenient that the challenging party would, for all practical purposes, be deprived of his or her day in court.

Sterling Nat. Bank as Assignee of NorVergence, Inc. v Eastern Shipping Worldwide, Inc., 35 AD3d 222 (1<sup>st</sup> Dept 2006) (citations and internal quotations omitted).

There are no factual allegations by plaintiffs' in opposition to the motion that their consent to the forum selection clause itself was induced by fraud or duress. Courts in this jurisdiction have enforced forum selection clauses under similar circumstances. See G&R Moojestic Treats, Inc. v Maggiemoo's Intern., LLC, 2004 WL 1110423, \*4 (SD NY, May 19, 2004) ("bare bones allegations are insufficient to invalidate the forum selection clause" in franchise agreement). The mere fact that plaintiffs allegedly do not have the resources to litigate in the forum they agreed to does not, by itself, constitute grounds for this court to reform the parties agreement by

ignoring the choice of forum clause. See Doctor's Associates, Inc. v Hamilton, 150 F3d 157, 163 (2d Cir 1998) ("In Doctor's Assocs. v Stuart, 85 F3d 975 (2d Cir 1996), we . . . concluded that there was nothing unconscionable about the arbitration clause because it clearly explained both the parties' responsibility for their own costs, which the franchisee was free to investigate before entering into the agreement, and that arbitration would take place in Connecticut.").

Accordingly, it is

ORDERED that the motion is GRANTED; and it is further

ORDERED that the Clerk is directed to enter judgment DISMISSING the complaint against defendants THE QUIZNOS MASTER LLC, THE QUIZNOS CORPORATION, THE QUIZNOS FRANCHISE COMPANY, THE QUIZNOS LICENSING COMPANY, QFA ROYALTIES LLC, and JOHN DOE QUIZNOS ENTITIES 1-10; and it is further

ORDERED that the caption of this action going forward shall read

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SAMARENDRA DEY, KALACHAND DUTTA, and NEW AR&D CORPORATION,

Plaintiffs

v

Index No.  
602639/2006

ROC CORP., and ROBERT TOBIAS,  
Defendants.

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and it is further

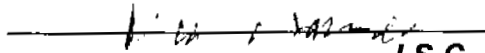
ORDERED that the movants shall serve a copy of this Order with notice of entry upon the County Clerk and the Trial Support Office (Room 158, 60 Centre Street) who are directed to update their records; and it is further

ORDERED that the remaining parties are hereby directed to attend a preliminary conference on October 30, 2007, at 9:30 A.M., at the Courthouse, IAS Part 59, Room 1254, 111 Centre Street, New York.

This is the decision and order of the court.

**Dated:** October 2, 2007

ENTER:

  
**DEBRA A. JAMES**  
J.S.C.

**FILED**

OCT 10 2007

NEW YORK  
COUNTY CLERK'S OFFICE